

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DAVID TRAN

VS.

**NATIONWIDE PROPERTY AND
CASUALTY INSURANCE COMPANY
AND SCOTTIE R. AYERS**

§
§
§
§
§
§

NO. 4:15-CV-02779

JURY DEMANDED

AGREED MOTION FOR REMAND BASED ON STIPULATION OF DAMAGES

Plaintiff, David Tran, and Nationwide Property and Casualty Insurance Company and Scottie R. Ayers, through their undersigned attorneys, hereby file their Agreed Motion for Remand Based on Stipulation of Damages. The parties would respectfully show the court as follows:

1. A court may remand a case at any time on the basis of a defect in subject matter jurisdiction identified in a Motion for Remand. 28 U.S.C. § 1447(c). The amount in controversy must exceed \$75,000.00 for the court to exercise diversity jurisdiction under 28 U.S.C. §1332(a).
2. This case was removed based on diversity jurisdiction. (Doc. 1).
3. After filing of the removal, Plaintiff has stipulated that he will not seek damages in excess of \$74,999.99, including any damages related to economic damages, consequential damages, punitive damages, statutory damages, attorneys' fees, and any other element of damages exclusive of interest and court costs. Plaintiff agrees neither to seek nor to accept any amount in excess of \$74,999.99 for all damages and attorney's fees, exclusive of interest and costs, sought from Nationwide Property and Casualty Insurance Company and/or Scottie R. Ayers, or any person or entity acting on its behalf, in this case, on any cause of action now

asserted or that might be asserted at any time in the future by Plaintiffs in relation to the above-entitled cause of action.

4. That stipulation was been filed with the Court prior to this Motion.

5. Defendant has accepted and relied upon that stipulation.

6. Based on Plaintiff's written stipulation that the amounts in controversy do not exceed \$74,999.99 exclusive of interest and costs, remand is now appropriate.

7. However, the parties agree that, should Plaintiffs violate the foregoing stipulation, then in addition to Defendant's other available remedies such as filing motions for contempt or to enforce the stipulation – Defendant has also reserved the right to seek removal of this case.

CONCLUSION

8. Based on Plaintiff's written stipulation that the amount in controversy does not exceed \$74,999.99, exclusive of court costs, remand is now appropriate. In addition to other remedies, Defendant specifically reserves the right to seek removal again if the Plaintiff ever violates the damages stipulation.

Respectfully submitted,

s/ Jason M. Byrd

Jason M. Byrd

State Bar No. 24036303

Federal ID No. 35780

Attorney in Charge

Thomas C. Mayo

State Bar No. 24032703

Federal ID No. 1040851

The Byrd Law Firm

448 Orleans Street

(409) 924.0660/ (409) 924.0035

ATTORNEYS FOR PLAINTIFF

s/ James R. Carsey
James R. Carsey
State Bar No. 24045620
Federal ID No. 567102
Thompson Coe Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056
(713) 403.8210 / (713) 403.8299
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record, in accordance with the Federal Rules of Civil Procedure this 3rd day of November, 2015.

James R. Carsey
Thompson Coe Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056

VIA ECF

s/ Jason M. Byrd
Jason M. Byrd